

### INSTRUCTIONS

You may use one bluebook if you write on both sides of the pages, or two bluebooks if you write on only one side (or every other line, or anything that adds up to one bluebook on both sides). If you type, make a good faith estimate of the equivalent. Please put answers in the bluebook; if you type, put the pages into the bluebook cover.

You may use any materials you wish, but nothing beyond the casebook, assigned cases, and class discussion is necessary.

#### QUESTION 1

Alan was an entrepreneur who had made money in many ways, although he had not graduated from high school. He bought an office building from Barbara and gave her a mortgage to secure part of the purchase price. Both the deed and the mortgage were recorded.

While negotiating for the land, Alan approached Calvin, an independent insurance agent. He told Calvin that he was buying a piece of property and wanted fire insurance to protect him and Barbara. Calvin did not inquire as to whether Alan was buying on a land contract or with a mortgage and he did not check the record. He found coverage with Firemark Insurance Company, which issued a policy naming Alan, contract vendee, and Barbara, contract vendor, as Insureds. The policy contained a standard mortgage clause, applicable if a mortgagee was named in the declarations.

A year later fire damaged the building. Alan's claim was denied because the insurer's investigation indicated Alan had committed arson. Barbara then claimed as mortgagee. Her claim was denied because she was insured as a contract vendor, not a mortgagee, and so the standard mortgage clause did not protect her from the wrongful acts of her coinsured. Barbara sued Firemark and Calvin, alleging that the policy should have covered her as mortgagee, that the agent was responsible for the mistake, and that his knowledge bound the insurer. She asked for reformation or, in the alternative, a finding that the insurer was stopped to deny coverage. She asserted negligence against Calvin, and asked for judgment against him if Firemark was found not liable. Firemark cross-claimed against Calvin. Decide the cases.

#### QUESTION 2

Park Corporation operated a jewelry store in a shopping mall. It had a burglary insurance policy with Trustworthy Insurance Company. The policy covered losses from wrongful entry to the premises, and provided that such entry shall be made by actual force or violence of which there shall be visible marks made by tools, explosives, electricity, gas or chemicals, upon the

exterior of (1) all of said doors of such safe and vault, if any, containing such safe if entry is made through such doors, or (2) the top, bottom, or walls of such safe and of the vault through which entry is made, if not made through such doors.

Park had a fixed routine for closing its stores. At closing time the store employees closed and locked the steel gate leading to the main mall corridor. They then took the jewelry from display cases, placed it in cardboard boxes, placed the boxes in the safe, along with the cash box, and closed the safe door. All except two employees went into the rear hallway and waited for the remaining two, who closed the safe, manually checked the handle, and spun the combination knob, locking the safe. They then set the alarm and tested to make sure it was set. The alarm had three triggers, one wired into all the exterior doors of the store, the second a sonic alarm located in the ceiling above the safe and sensitive to noise or physical intrusion in the protected space, and the third bolted onto the outside of the only door of the safe and activated by the opening of the safe door. The triggers were wired into an outside monitoring device; the activation of any one would set off a visual, graphic, and audible signal at the monitoring service site of the alarm company. After setting the alarms, the two employees turned off the lights and left together by the rear door. One locked the door with a key; the other checked the handle and confirmed that it was locked. All employees then walked in a group to the parking lot. This routine was followed on May 10, 1989.

Sometime after closing that day the mall security dispatcher received a call from a male who falsely identified himself as the manager of a gift shop in the mall. He falsely advised the dispatcher that there would be deliveries to the gift shop and that security officers should not be suspicious if they saw a green Buick parked outside the corridor behind Park's store. The dispatcher did not recognize the voice, and the caller could not be identified as one of Park's employees. Shortly after the call, the alarm system in Park's store was activated. Police responded within 15 minutes and found the rear door closed but unlocked. There were no signs observable to the naked eye that the door was opened with any tool. The safe door was closed and locked, but jewelry display boxes that had been placed in the safe were found empty on the floor outside the safe. One of the store employees, called by security, arrived and opened the safe by combination. Nearly all of the contents were missing. The police found fingerprints on the top of the inside of the door of the safe; they did not match any fingerprints of any Park employee, current or past. There were no marks observable to the naked eye of entry made by tools, explosives, electricity or chemicals on the exterior of the only door of the safe.

Park claimed under its burglary policy. Trustworthy denied the claim on the ground that no burglary, as defined by the policy, had occurred. Park sued for breach of contract and for bad faith refusal to pay the claim. The trial court gave summary judgment for Trustworthy on both claims. Park appealed.

1. Argue the case for Park.
2. Argue the case for Trustworthy.

### QUESTION 3

Pam was seriously injured in an automobile accident and became paralyzed. She sued Dan, a doctor who had attended her, and his medical corporation, alleging malpractice in failing to examine her spinal x-rays. The corporation carried a malpractice policy insuring it and each employed doctor for up to \$3 million per occurrence. During discovery it became apparent that another doctor, Dora, also employed by the corporation, might also have been negligent in failing to examine the x-rays. Pam's attorneys notified the insurer that they were seeking damages for the additional negligence. The insurer responded that any action against Dora was barred by the statute of limitations. Pam argued that she could nevertheless recover from the corporation, which was made a party within the limitation period, on respondeat superior principles. The insurer then answered that there would be only one limit because this was one occurrence.

The trial court held that there was only one occurrence, and gave judgment for Pam for \$3 million. She appealed dismissal of the second claim. Decide the case.

### QUESTION 4

Paul operated a racetrack. He had liability insurance with Dandy Insurance Company and paid an extra premium for an endorsement providing coverage for liability to drivers, pit crew, and race officials who might be injured at the track. The endorsement excluded injury to an employee of the insured in the course of employment. Paul never read the endorsement, and the exclusion was not pointed out to him by the agent.

A race flagman, Frances, was struck and injured by a racing automobile. Dandy, anticipating a suit, sent Paul a reservation of rights letter, pointing out the exclusion. Following investigation, Dandy decided that Frances was not an employee and sent Paul a letter stating that there were no coverage issues. A month later Frances sued Paul in two counts. The first alleged liability to an employee for failing to provide worker's compensation insurance. The second alleged Frances was an independent contractor entitled to recover for negligence. Paul sent the complaint to Dandy. Dandy then sent Paul another letter, this time renewing the reservation of rights. Dandy said it would defend both counts, but that if the trial court determined that Frances was an employee it would not indemnify Paul. The letter suggested that Paul might want to employ separate counsel at his own expense.

Dandy provided Paul with an attorney, Ann. Ann decided to prove that Frances was an independent contractor to preserve the defenses of contributory negligence and assumption of the risk, not available in the first count. Ann filed a motion for partial summary judgment that Frances was an independent contractor. The court denied the motion. Frances's attorney and Ann then jointly stipulated that Frances would dismiss the independent contractor claim and proceed solely on the allegation that she was an employee of Paul.

At trial Ann attempted to prove that Frances was not an employee, but the jury found that she was and awarded her \$190,000. Dandy refused to indemnify Paul on the ground of the exclusion.

Paul sued for a declaration that the policy covered the judgment, for a finding of bad faith, and for a finding that Dandy breached its fiduciary duty to Paul by controlling the litigation without informing Paul of a conflict of interest. The trial court gave summary judgment for Dandy. Paul appealed. Decide the case.